# CASE NOTE ON INDIAMART INTER MESH LIMITED V. OPEN AI INC. & ORS. THE QUANDARY OVER THE STATUS OF AI UNDER THE IT ACT, 2000

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**Introduction:**

Section 79 of the Information Technology Act, 2000[1] (hereinafter referred to as "The Act" or "IT Act") is the foundation of intermediary liability. By virtue of this provision, a conditional safeguard is imposed upon intermediaries and ,therefore, has become a focal point to resolve the quandary surrounding disputes taking place in the digital domain area.

Over the years, Indian courts have discussed the provision in a plethora of precedents such as Avinish Bajaj, Shreya Singhal[2], & Christian Louboutin Sas[3]. These decisions have consistently affirmed that an intermediary can only claim the safe harbour exception if it undertakes a passive role and satisfies the conditions given under section 79(2) & (3).

While these judgements have remained instrumental in helping courts decide cases involving conventional intermediaries such as search engines, etc., the emergence of generative AI has raised a fresh legal question. Unlike the conventional intermediaries, AI Platforms generate responses tailored to the input given, thereby creating something novel in the process, rather than merely storing or hosting third party data or information, thereby creating a conundrum as to the applicability of section 2(1)(w) of the IT Act, 2000.[4]

In this context, the present Case Note delves into the discussion undertaken by the Calcutta High Court in the case of Indiamart Inter Mesh Limited v. Open AI Inc.[5], surrounding the question-whether ChatGPT qualifies as "intermediary" or as an "originator" under the

[1] Information Technology Act, 2000, § 79, No. 21, Acts of Parliament, 2000 (India).
[2] Shreya Singhal v. Union of India, AIR 2015 SC 1523.
[3] Christian Louboutin Sas v. Nakul Bajaj, 2018 SCC OnLine Del 12215.
[4] Information Technology Act, 2000, § 2(1)(w), No. 21, Acts of Parliament, 2000 (India).
[5] Indiamart Inter Mesh Limited v. Open AI Inc. & Ors., 2026 SCC OnLine Cal 5738.

provisions of the IT Act, 2000. Such intervention by the court was called for, given the evolving nature of AI and its significance among the Indian diaspora.

**Facts:**

The petitioner is this case was the digital platform IndiaMart, which is used by consumers to obtain access to supplier for diverse products. The entire business of the IndiaMart is Internet Centric.

The products found on the platform are found on various intermediaries and search engines. These third party platforms redirect consumers to IndiaMart.

Open AI INC, is the company responsible for the creation of ChatGPT, that is an online chat interface which allows users to interact with AI models. The technology used by the AI platform, allows users to enter inputs which include text prompts and receive content generated by the platform. The forum functions by using an engine called as "Large Language Model" (LLM).

The present *lis* arose in 2024, when the feature of "ChatGPT search" was introduced by the medium. The same permitted the AI medium to provide rapid answers with relevant hyperlinks to various websites. In lieu of the same, the platform also deployed built in safeguards for blocking certain outputs, steering users to safe alternate options and adding warning or checks.

The same was added to ensure that the forum is not used to aid any form of unlawful or illegal activity.

These safeguards are at the centre of the present *lis.*

The petitioner averred that ChatGPT's responses showcase an intent to exclude the petitioner by making listings available on the petitioner platform inaccessible and unavailable though an active/ working link is provided for other third party platforms. The conduct is highlighted as dilution of its mark, disparagement as well as unfair trade practice.

It was further indicated that the reason given by OpenAI for such exclusion is their name featuring on the **US Trade Representative Review of Notorious Markets List, 2024**

**(USTR)**. It was their contention that the same has no legal force, and is used to exclude IndiaMart listings with an intent to discriminate against their platform.

The legal quandary put before the court by the Petitioner was that ,in terms of section 2(1)(w) r/w section 79(2)(c) of the IT Act, 2000, ChatGPT is an "intermediary" and hence is obliged to act in a non-discriminatory manner as per the IT Rules, 2021.[6]

In support of its legal contentions, it presented that there exists a right of knowledge that cannot be infringed by this kind of deliberate omission. The same is at variance with fundamental rights.

The respondent averred that the non-appearance of the Petitioner's link on the platform does not create a claim in law, and that they cannot restrain them from relying upon a policy to govern their medium.

The respondent rebutted the legal presumption created by IndiaMart by highlighting that the ChatGPT is not an "intermediary"; hence, it has no obligation under the IT Rules, 2021. Furthermore, the same can be categorised as an "originator" defined under the garb of section 2(1) (za) of the IT Act[7], 2000. It further averred that the right to carry on trade or business is grounded in the principle of *laissez-faire.* On the same dictum, it highlighted that there is no law that can compel a private business to operate on terms dictated by a third party.

The court, on the point of visibility, highlighted that IndiaMart is visible on ChatGPT, but just not in the manner IndiaMart would prefer too.

**The Seminary Question of Law:**

Whether ChatGPT is an "intermediary" under the garb of section 2(1)(w) of the IT Act or an "originator" under section 2(1)(za) of the IT Act?

The court to answer the question looked into draftsman's intent and noted that they did not take into account the creation of generative AI. Hence, the definitions provided under the Act were from the scope of humans or legal persons.

[6] Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021, r. 3(1)(n) (India).
[7] Information Technology Act, 2000, § 2(1)(za), No. 21, Acts of Parliament, 2000 (India).

The court then proceeded to take into consideration the differentiation between a search engine and an LLM. It noted that a Search Engine is a directory, where a user puts in a query, and the engine initiates a search over the internet and puts the results in the order of relevancy.

On the contrary, the court noted that the responses given by an LLM are more direct & "synthesised", as there is a broader application of independent processes exercised by the LLM. The court ,on prima facie grounds negated to refer to it as a search engine.

The court to arrive at this conclusion, worked around the Dynamic nature of ChatGPT. The court carefully noted that such results have a degree of newness, uniqueness and originality, meaning when the platform generates a Poem, or writes a paper, it becomes the source of new content.

These qualities put it under the bracket of an "originator", rather than an "intermediary".

The reason given by the court is that output obtained on ChatGPT are independently generated, and the results shown have an original element in them; it does not merely reproduce content in a carbon copy form like traditional search engines.

However, the court also highlighted the quandary that the output laid down by ChatGPT is not independent, and always requires a prompt to be given to it. Therefore, it remains an intermediary while delivering a result, as it is user dependent. This implies that AI cannot generate content suo moto, and is merely the resource. ChatGPT is therefore the provider of the resource. In such a framework, the human is the originator as he is the one who initiates the prompt.

**Analysis:**

Before the distinction between an "originator" and an "intermediary" is delved into, one must understand the role played by an intermediary, as the same is central to the averments surrounding the present case.

An "intermediary" under the IT Act can be of two types: Active and Passive intermediaries. An Active intermediary may enable the user to interact with the platform and transact, whereas a passive intermediary's role is limited to providing information, as they do not enable the user to select, modify or promote the content. This distinction was highlighted in the case of Zippo[8], wherein the court was dealing with jurisdiction over Websites.

The safe harbour exception may only be claimed by passive intermediaries, who merely host or transmit third-party content without control[9].

An "originator" under the Act must be understood in light of section 2(1)(za) r/w section 11[10]. Section 2(1)(za) defines "originator" in a generic sense, as a person who sends, generates, stores or transmits, or causes any electronic messages to be sent, generated, stored, or transmitted to any other person, but specifically excludes an intermediary.

Section 11 highlights when can an electronic record be attributed to the originator. The same is important as it highlights the scope of the definition. It includes within the scope any record shared by the originator himself, by any authority acting on behalf of the originator, and any information system acting automatically on behalf of the originator. The Court did not venture into the discussion of section 11, but this could be a point of discussion when in further litigation.

According to the Petitioner, ChatGPT squarely fit into the criteria laid down under Section 2(1)(w) r/w 79(2)(c), and hence has intermediary liability.

Section 79(2)(c) highlights the role of an "intermediary" to observe due diligence while observing its duties under this Act and other guidelines.

The Petitioner alleged that the platform actively discriminated against their website, thereby violating Articles 14, 19, & 21 of the Indian Constitution.

However, the court notably rejected that argument. Even assuming arguendo that the Respondent was an intermediary, it cannot be directed to display content as per the whims of the Petitioner, as a private corporation in a *laissez-faire* economy is permitted to govern its business as per his mandate. In this case, IndiaMart was visible on ChatGPT search, just not in the manner that IndiaMart wanted it to. The law in this situation is very clear, vis-a-viz the judgement of Shreya Singhal[11], where the court had noted that such liability only arises when

[8] Zippo Mfg. Co. v. Zippo Dot Com, Inc., 952 F. Supp. 1119 (W.D. Pa. 1997).
[9] Christian Louboutin Sas, supra note 4.
[10] Information Technology Act, 2000, § 11, No. 21, Acts of Parliament, 2000 (India).
[11] Shreya Singhal, supra note 3.

the intermediary does not pay heed to any government direction or rule and remove the impugned content. It cannot be directed to act as Private censor.

Even in the precedent referred to by the court, it was noted that "*No third party can compel a service provider to use its service in a manner to reflect its link or for its benefit.*"[12]

Although the Calcutta High Court noted that the IT Act was not made with the intent to address generative AI and its progression, these sections ,if interpreted in a broader sense, could have been used to address the classification of AI as an originator.

This court based its reasoning on the fact that when ChatGPT creates a work such as a poem, research paper, etc., it goes beyond the traditional electronic search record, and creates a novel output by application of several processes by the LLM.

In a recent case, the Delhi High Court also noted that "*the process of training of LLMs underlying ChatGPT can be considered as a form of research for generating new knowledge and advancing artificial intelligence systems.*"[13] This further supplements the Calcutta High Court's observation that the work created by ChatGPT is novel.

In the global landscape, a German court in May 2026 denied the Safe harbour exception to Google's AI Overview, as the results given by it were not mere a list of search results, but a generated answer that was selected, summarised and presented in Google's own interface.[14]

This showcases that the view of the Indian IPD based in Calcutta is aligned with the global trend.

Therefore, the decision of the court is a reasoned one and in the backdrop of the growing AI landscape, a rather essential one. However, one point of quandary that the court also marked was that the AI could be an intermediary, since the platform requires an input to be given by a human, without which the platform cannot deliver an output making it user dependent. In this scenario, the definition of "person" in light of sections 2(1)(w) and 2(1)(za) of the IT Act

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[12] Google LLC v. DRS Logistic(P)Ltd.,
[13] ANI Media Pvt. Ltd. v. OPEN AI OPCO LLC, CS(COMM) 1028/2024.
[14] Adam DeMotte Kramer, When AI Gets It Wrong, Who Pays? A German Court Just Answered That Question and Google Doesn't Like the Answer, KRAMER & CO. (June 26, 2026), https://kramerand.co/when-ai-gets-it-wrong-who-pays-a-german-court-just-answered-that-question-and-google-doesnt-like-the-answer/.

should be re-considered, as this could be a cause for confusion and continuous litigation.

**Conclusion:**

The judgement marks an important step in developing the framework of the IT Act, 2000 in the contours of generative AI platforms, such as ChatGPT. The Court's recognition of such platforms as originator, rather than conventional intermediaries, settles the long awaited quandary on the applicability of section 79 to AI platforms. However, as noted in the judgement, the broader questions surrounding the legal personality of AI systems and the scope of the term "person" with regard to definitions of "originator" & "intermediary" remain open for future judicial deliberation.